

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into between **Diana Carney** ("Ms. Carney") and the State of New Hampshire Department of Health and Human Services (referred to herein as "the State"), collectively referred to as "the Parties."

WHEREAS, Ms. Carney was previously employed by the State;

WHEREAS, Ms. Carney initiated litigation against the State which is pending in the Belknap County Superior Court, Docket No. 212-2016-CV-00047 (hereinafter referred to as the "Litigation");

WHEREAS, the State disputes any liability or responsibility on its respective behalf, or on behalf of its respective employees and agents, for the claims raised in the Litigation;

WHEREAS, the Parties desire to compromise, settle, buy complete peace from, and terminate any and all known and unknown disputes, claims, controversies, demands, actions, causes of action, and litigation as exist between them and against the Releasees hereinafter named arising from or in any way related to Ms. Carney's employment and/or separation from employment with the State, and any damages, costs, expenses, and/or injuries that she sustained or may sustain as a result thereof, and in order to avoid the time and expense of further litigation;

WHEREAS, the Parties have consulted with counsel concerning the Litigation and the provisions of this Agreement;

NOW THEREFORE, in consideration of the recitals stated above, which are hereby incorporated into this Agreement and made a part hereof, and in consideration of the mutual promises, covenants, agreements, representations and warranties contained herein, the receipt and sufficiency of which are hereby acknowledged, it is agreed between the Parties as follows:

1. Consideration. the State shall pay to and Ms. Carney agrees to accept in full accord and satisfaction of all claims, the total sum of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00), paid as follows:

a. Alleged Compensatory Damages. ^{Thirty-Four Thousand Five Hundred} A check made payable to Diana Carney in the amount of 34,500 Dollars (\$34,500.00) as alleged compensatory damages, for which a 1099 Form will be issued to Ms. Carney; and ^{45C}

b. Attorneys' Fees and Costs. ^{Thirty-Eight Thousand} A check made payable to Law Office of Leslie Johnson, PLLC in the amount of 38,000 Dollars (\$38,000.00) as attorneys' fees and costs, for which 1099 Forms will be issued to the law firm and to Ms. Carney. Prior to issuance of this check, Law Office of Leslie Johnson, PLLC will provide the State with an executed Form W-9. ^{man-wage}

within 21 days *USE JUDGE*

The above payments will be made ^{after} after this agreement has been fully signed, and the State has received the following completed tax forms: 1099 from Ms. Carney and W-9's from her counsel. *(w 9)*

Ms. Carney does hereby agree to the dismissal with prejudice of the above-mentioned action without further notice and any other causes of action arising out of the events mentioned hereinabove. Ms. Carney's counsel shall not disburse settlement proceeds until such time as Ms. Carney has filed a fully-executed Stipulation of Dismissal with Prejudice, dismissing the Complaint and any other claims filed against the State, in their entirety with prejudice, and without further costs or attorneys' fees to any party and waiving all appeal rights.

Ms. Carney and the State expressly agree that the State shall have no obligation for payment of any attorneys' fees for Ms. Carney or any other payment not expressly set forth in this Paragraph 1. Performance of the State's commitments herein is expressly conditioned upon entry by the Court of the Stipulation of Dismissal with Prejudice or similar order, *such as docket markings.*

Counsel for Ms. Carney shall notify the Court of settlement as soon as the Parties and their counsel have agreed to a final version of this Agreement. In exchange for the consideration to be paid by the State, Ms. Carney authorizes counsel to file with the Court a Stipulation of Dismissal with Prejudice at the time of payment of settlement to Ms. Carney and her counsel. *for docket markings*

2. General Release by Ms. Carney. In consideration of the payment to be made by the State, described in Paragraph 1 herein and the mutual promises, covenants, agreements, and representations contained herein, Ms. Carney, on behalf of herself, her heirs, representatives, and assigns, knowingly and voluntarily fully release and forever discharge the State and its successors, assigns, past, present and future officers, directors, employees, agents, purchasers, attorneys, insurers, and shareholders, subsidiaries, parent and sister corporations, affiliates, and insurers ("the Releasees") from all known and unknown claims, causes of action, suits, litigation, demand, and obligations of every kind, including claims for damages, wages, attorneys' fees and any other form of relief available at law or in equity, which they have or may have by means of any matter, cause, or thing whatsoever arising from the beginning of time to the Effective Date of this Agreement. Without limiting the generality of the foregoing, this release includes all matters arising out of or in connection with Ms. Carney's employment and/or separation from employment with the State from the beginning of time to the Effective Date of this Agreement, including, but not limited to wrongful termination, violation of New Hampshire's Whistleblower's Protection Act, retaliation, defamation, libel, unlawful discrimination, harassment, constructive discharge, breach of implied contract, intentional infliction of emotional distress, negligent infliction of emotional distress, any rights or claims alleging failure to pay wages pursuant to New Hampshire RSA 275 *et seq.* and/or any federal wage statutes, violation of procedural and substantive due process rights, negligent supervision or retention, invasion of privacy, assault, battery, conspiracy, unfair labor practices, violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, RSA 354-A, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act and Americans with Disabilities Amendments Act, the Family and Medical Leave Act, the Whistleblower's Protection Act, 42 U.S.C. §1983, New Hampshire Workers' Compensation laws, Equal Pay Act, Employee Retirement Income Security Act ("ERISA"),

American Recovery and Reinvestment Act ("ARRA") of 2009, Rehabilitation Act of 1973, Older Workers Benefit Protection Act of 1990, 42 U.S.C. 1981, Occupational Safety and Health Act, National Labor Relations Act, Genetic Information Nondiscrimination Act, and any and all claims that may be asserted under state or federal statute or common law. Without limiting the generality of the foregoing, Ms. Carney expressly releases and waives any and all claims set forth or which could have been set forth in the Litigation. Ms. Carney expressly acknowledges and assumes all risk, chance, or hazard that any injuries and/or damages resulting from her employment with the State may become permanent, progressing, greater, or more extensive than is known, anticipated, or expected.

3. Re-employment. Ms. Carney waives any right to reinstatement and further agrees that because of circumstances unique to her, including but not limited to irreconcilable differences with the State, she will not apply for or otherwise seek re-employment, including, but not limited to, regular, temporary, contract or consulting employment, with the State or any current legally related affiliates of the State at any time in the future. In addition, Ms. Carney acknowledges and agrees that if she applies for and/or is or becomes re-employed by the State or any current legally related affiliates of the State at any point in the future, the State has no duty to and may refuse to consider her for re-hire and/or if she is hired, to immediately terminate her employment pursuant to this Agreement without notice and without cause (regardless of any statements made or documents given to Ms. Carney at the time), and she has no right to recover for the termination.

4. Indemnity with Respect to Tax Treatment. Should the characterization of the payments set forth in Paragraph 1 be found to be improper or unwarranted by the Internal Revenue Service or other taxing authority with the result that the State is held obligated to pay taxes, additional taxes, penalties, or interest which should have been deducted from the gross amount of such payments, or if the Internal Revenue Service or other taxing authority otherwise finds the payment to be taxable or subject to tax, Ms. Carney agrees to fully indemnify the State for all employee portions of such taxes, penalties, or interest actually paid by it and any attorneys' fees or other costs incurred by the State related thereto; and further agrees that she will not assert, file, or make any claims against the State for any portions of such taxes, penalties, or interest she may be compelled to pay and the costs, including attorneys' fees, which she may have to pay in connection with any disputes between her and the Internal Revenue Service or other taxing authority.

5. No Admission. The Parties agree that any consideration given or paid with respect to this Agreement is in compromise of disputed claims and that the giving or payment of consideration in exchange for the general release of claims is not, and will not be construed as, an admission of liability or wrongdoing on the part of the State, which denies any liability or wrongdoing as to each and every claim which has been or which may have been asserted against them.

6. Confidential Information. Ms. Carney agrees not to disclose to any person or entity any confidential, proprietary or trade secret information on or about any of the Released Parties to which she may have had access to or gained during the course of her employment.

9. Breach of Agreement. The Parties acknowledge and agree that any Party found to

have breached this Agreement may be held liable for damages, reasonable attorneys' fees, and expenses resulting from any such breach and also for equitable relief as may be awarded by the court.

10. No Admission of Wrongdoing. Ms. Carney agrees that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by the State of any liability or unlawful conduct of any kind and acknowledge that the State expressly denies the allegations made by Ms. Carney in this matter. The Parties agree that this Agreement may not be used as evidence in any subsequent proceeding of any kind except one in which one of the Parties alleges a breach of this Agreement or one in which any of the Parties elects to use the Agreement as a defense to any claim.

11. Consultation with Counsel. In executing this Agreement, the Parties acknowledge that they have been advised to consult with counsel, and that they have executed this Agreement knowingly, voluntarily and without undue influence or duress. The Parties expressly consent to each and every term and provision of this Agreement.

12. Integration Clause: Amendment, Governing Law. This Agreement contains the complete, final, and exclusive embodiment of the entire understanding between the Parties. This Agreement is entered into without reliance on any promise, representation, agreement or understanding, oral or written, between and among the Parties relating to the subject matter of this Agreement, other than those expressly contained herein. No amendment of this Agreement shall be valid or effective unless made in writing and executed by the Parties hereto subsequent to the Effective Date of this Agreement. This Agreement shall be enforced in accordance with the laws of the State of New Hampshire, and the Parties agree that any litigation to enforce the provisions of this Agreement will take place in New Hampshire. In the event of litigation regarding this Agreement, the Parties expressly submit to the jurisdiction of the federal and state courts located in New Hampshire.

13. Costs and Fees. Except as specifically set forth herein, the Parties will bear their own costs, expenses and attorneys' fees, whether taxable or otherwise, incurred in or arising out of or in any way related to the matters released herein.

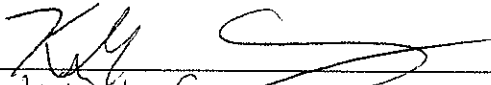
14. Construction. The Parties acknowledge that they each had an equal opportunity to control the language in this Agreement, and that this Agreement was mutually drafted. The Parties agree that in no event shall this Agreement be presumptively construed against any Party.

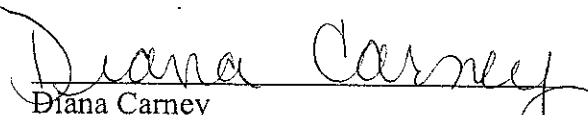
15. Severability. If any portion of this Agreement is void or deemed unenforceable for any reason, the remaining portions shall survive and remain in effect, with any necessary modification to become a part hereof and treated as though contained in this original Agreement.

16. Countersignatures. This Agreement may be signed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same instrument.

PLEASE READ CAREFULLY, THIS AGREEMENT INCLUDES
A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

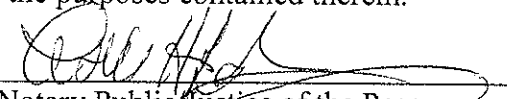
WITNESS:


Kaleigh Carney
Date: April 17, 2018


Diana Carney
Date: April 17, 2018

State of New Hampshire
Hillsborough, ss.

Personally appeared, before me, Diana Carney and acknowledged that she signed the foregoing document this 17th day of April, 2018, for the purposes contained therein.


Notary Public/Justice of the Peace
My Commission Expires: 4/18/19

State of New Hampshire
Department of Health and Human Services

By: The Office of the Attorney General
pursuant to RSA 99-D:2

Dated: April 17, 2018

By:


Duly Authorized

